

RECEIVED

JAN 22 2013

DEPARTMENT OF
WATER RESOURCES

via email

Robyn M. Brody (ISB No. 5678)
Brody Law Office, PLLC
P.O. Box 554
Rupert, ID 83350
Telephone: (208) 434-2778
Facsimile: (208) 434-2780
robynbrody@hotmail.com
Attorney for Rangen, Inc.

J. Justin May (ISB No. 5818)
May, Browning & May
1419 W. Washington
Boise, Idaho 83702
Telephone: (208) 429-0905
Facsimile: (208) 342-7278
jmay@maybrowning.com
Attorneys for Rangen, Inc.

Fritz X. Haemmerle (ISB No. 3862)
Haemmerle & Haemmerle, PLLC
P.O. Box 1800
Hailey, ID 83333
Telephone: (208) 578-0520
Facsimile: (208) 578-0564
fxh@haemlaw.com
Attorneys for Rangen, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE PETITION
FOR DELIVERY CALL OF RANGEN,
INC.'S WATER RIGHT NOS. 36-02551
& 36-07694

Docket No. CM-DC-2011-004

**AFFIDAVIT OF ROBYN M.
BRODY IN SUPPORT OF MOTION
FOR PROTECTIVE ORDER**

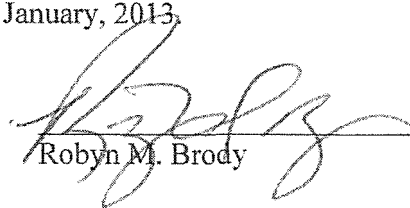
STATE OF IDAHO)
) ss
County of Minidoka)

Robyn M. Brody, being sworn upon oath, deposes and says:

1. My name is Robyn M. Brody. I am attorney licensed to practice law in the State of Idaho. I represent Rangen, Inc. ("Rangen"). The matters contained in this affidavit are based on my personal knowledge.
2. Attached hereto as Exhibit 1 is a true and correct copy of IGWA's Third Set of Discovery to Rangen.

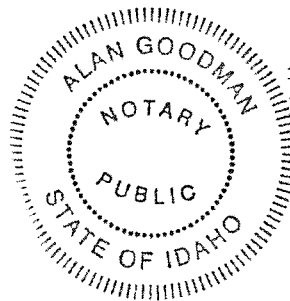
3. Attached hereto as Exhibit 2 is a true and correct copy of portions of IGWA's First Set of Discovery.
4. Attached hereto as Exhibit 3 is a true and correct copy of a letter from Candice McHugh to Robyn Brody dated January 15, 2013.
5. To date, Rangen has paid Ascensio Document Mangement Solutions over \$4,300.00 and paid Steve Seidemann, a forensic computer analyst, almost \$7,500.00.

DATED this 21st day of January, 2013.



Robyn M. Brody

SUBSCRIBED AND SWORN to before me this 21st day of January, 2013



Alan Goodman

Notary Public for the State of Idaho

Residing at: Rupert Idaho

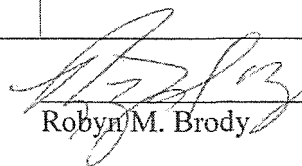
My Commission Expires: 10-20-2015

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 21st day of January, 2013 she caused a true and correct copy of the foregoing document to be served upon the following by the indicated method:

<p>Original: Director Gary Spackman Idaho Department of Water Resources P.O. Box 83720 Boise, ID 83720-0098 Deborah.Gibson@idwr.idaho.gov</p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/></p>
<p>Garrick Baxter Chris Bromley Idaho Department of Water Resources P.O. Box 83720 Boise, Idaho 83720-0098 garrick.baxter@idwr.idaho.gov chris.bromley@idwr.idaho.gov</p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/></p>
<p>Randall C. Budge Candice M. McHugh Thomas J. Budge RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P.O. Box 1391 101 South Capitol Blvd, Ste 300 Boise, ID 83704-1391 Fax: 208-433-0167 rcb@racinelaw.net cmm@racinelaw.net tjb@racinelaw.net</p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/></p>
<p>Sarah Klahn Mitra Pemberton WHITE & JANKOWSKI Kittredge Building, 511 16th Street, Suite 500 Denver, CO 80202 sarahk@white-jankowski.com mitrap@white-jankowski.com</p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/></p>
<p>Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, ID 83201 dtranmer@pocatello.us</p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/></p>
<p>John K. Simpson Travis L. Thompson Paul L. Arrington Barker Rosholt & Simpson, L.L.P.</p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/></p>

<p>195 River Vista Place, Suite 204 Twin Falls, ID 83301-3029 Facsimile: (208) 735-2444 tl@idahowaters.com jks@idahowaters.com</p>	<p>E-Mail <input checked="" type="checkbox"/></p>
<p>C. Thomas Arkoosh Arkoosh Eiguren P.O. Box 2900 Boise, ID 83702 Tom.arkoosh@aelawlobby.com</p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/></p>
<p>W. Kent Fletcher Fletcher Law Office P.O. Box 248 Burley, ID 83318 wkf@pmt.org</p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/></p>
<p>Jerry R. Rigby Hyrum Erickson Robert H. Wood Rigby, Andrus & Rigby, Chartered 25 North Second East Rexburg, ID 83440 jrigby@rex-law.com herickson@rex-law.com rwood@rex-law.com</p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/></p>


Robyn M. Brody

Robyn M. Brody (ISB No. 5678)
Brody Law Office, PLLC
P.O. Box 554
Rupert, ID 83350
Telephone: (208) 420-4573
Facsimile: (208)260-5482
rbrody@cableone.net
robynbrody@hotmail.com
Attorneys for Rangen, Inc.

J. Justin May (ISB No. 5818)
May, Browning & May
1419 W. Washington
Boise, Idaho 83702
Telephone: (208) 429-0905
Facsimile: (208) 342-7278
jmay@maybrowning.com
Attorneys for Rangen, Inc.

Fritz X. Haemmerle (ISB No. 3862)
Haemmerle & Haemmerle, PLLC
P.O. Box 1800
Hailey, ID 83333
Telephone: (208) 578-0520
Facsimile: (208) 578-0564
fxh@haemlaw.com
Attorneys for Rangen, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE PETITION
DELIVERY CALL OF RANGEN, INC.'S
WATER RIGHT NOS. 36-02551 & 36-
7694

Docket No. CM-DC-2011-004

**RANGEN, INC.'S REPLACEMENT
SET OF RESPONSES TO IGWA'S
THIRD SET OF DISCOVERY
REQUESTS**

COMES NOW, Rangen, Inc. ("Petitioner"), by and through its counsel of record,
and provides the following Responses to IGWA'S THIRD SET OF DISCOVERY
REQUESTS:

RANGEN, INC.'S REPLACEMENT SET OF RESPONSES TO IGWA'S THIRD SET
OF DISCOVERY REQUESTS - 1

Exhibit 1

GENERAL OBJECTIONS

Petitioner objects to the Requests to the extent that they seek information protected by the attorney-client privilege, the work product doctrine or any other applicable privilege or immunity.

Petitioner objects to the Requests as premature, burdensome, and improper to the extent they seek factual information in support of Petitions and Claims that Petitioner has not had opportunity to fully prepare and for which Petitioner may require discovery from Plaintiffs or others. These responses are subject to the discovery or recollection of additional information, knowledge, or facts.

These responses are provided pursuant to the Rules of Procedure of the Idaho Department of Water Resources ("IDWR") and the Idaho Rules of Civil Procedure to the extent incorporated by the IDWR. To the extent the Requests attempt to impose any differing or additional instructions, definitions, or obligations, Petitioner objects to the Requests.

DISCOVERY REQUESTS

INTERROGATORIES

INTERROGATORY NO. 34: Please describe in detail the nature of Rangen's business operation, ownership, water use, research, or other feed or fish propagation practice at Woods Farm Ponds and Decker Springs Farm Ponds including fish production numbers, identify the manager and/or operator of each facility and the water rights that supply each facility.

ANSWER TO INTERROGATORY NO. 34: Objection. This interrogatory is not reasonably calculated to lead to the discovery of admissible evidence to the extent it requests information outside of the Research Hatchery where the water rights at issue are used. Without waiving said objection, the only fish propagation facility that Rangen currently owns or operates is the Research Hatchery which IGWA and its experts inspected in June 2012.

INTERROGATORY NO. 35: Please supplement your answer to Interrogatories No. 21 and 22 and provide the requested information pertaining to each of the facilities identified in Interrogatory No. 34.

ANSWER TO INTERROGATORY NO. 35: Objection. This interrogatory is not reasonably calculated to lead to the discovery of admissible evidence to the extent it requests information outside of the Research Hatchery where the water rights at issue are used.

SECOND REQUEST FOR PRODUCTION

Request for Production No. 20: Please produce all documents, including but not limited to electronic files and data files relevant to your Answer to Interrogatory Nos. 34 and 35.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20: Objection. This interrogatory is vague and ambiguous and is not reasonably calculated to lead to the discovery of admissible evidence to the extent it requests information outside of the Research Hatchery where the water rights at issue are used.

Respectfully submitted this 11th day of January, 2013.

BRODY LAW OFFICE, PLLC

By

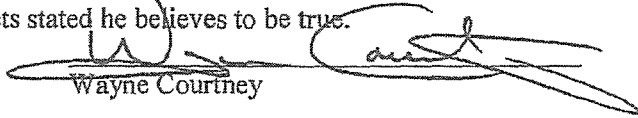

Robyn M. Brody

VERIFICATION

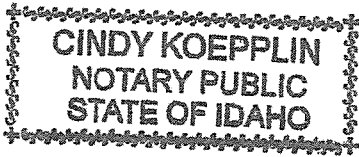
STATE OF IDAHO)
) ss
County of Twin Falls)

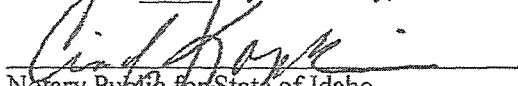
Wayne Courtney, being first duly sworn, on oath, deposes and says:

That he is the Executive Vice President of Rangen, Inc., that he has read the foregoing RANGEN, INC.'S RESPONSES TO IGWA'S THIRD SET OF DISCOVERY, knows the contents thereof, and the facts stated he believes to be true.


Wayne Courtney

SUBSCRIBED AND SWORN to before me this 11 day of January, 2013.


CINDY KOEPLIN
NOTARY PUBLIC
STATE OF IDAHO


Notary Public for State of Idaho
Residing at File ID, therein.
Commission Expires: 9-5-15

Randall C. Budge, ISB No. 1949
Candice M. McHugh, ISB No. 5908
Thomas J. Budge, ISB No. 7465
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
101 South Capitol Boulevard, Suite 300
Boise, ID 83702
Telephone: 208-395-0011
Fax: 208-433-0167

Attorneys for the Idaho Ground Water Appropriators, Inc.

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

**IN THE MATTER OF THE
PETITION DELIVERY CALL OF
RANGEN, INC.'S WATER RIGHT
NOS. 36-02551 & 36-7694**

**Docket No. CM-DC-2011-004
IGWA'S FIRST SET OF
DISCOVERY REQUESTS**

TO: RANGEN, INC.

Idaho Ground Water Appropriators, Inc., ("Ground Water Users" or "IGWA"), by and through counsel, pursuant IDAPA 37.01.01 Rules 521 and 522 of the Rules of Procedure of Idaho Department of Water Resources ("IDWR"), and the authorization to conduct discovery given by the Director of the IDWR at the May 22, 2012, status and scheduling conference, submits the following discovery requests to Rangen, Inc. ("Rangen") and its attorney of record.

INSTRUCTIONS AND DEFINITIONS

- a. When answering these discovery requests, you must include all information known or ascertainable upon reasonable inquiry to you or your agents, attorneys, investigators, employees, representatives, guardians, or any other person or persons acting on your behalf.
- b. If you cannot answer any of the following requests in full, after exercising due diligence to secure the information to do so, so state, and answer to the extent

Exhibit 2

Interrogatory No. 15: Identify the locations of all groundwater wells used to supply water to the Rangen facility, and for each such well explain how its groundwater is used within the Rangen facility.

Interrogatory No. 16: Have you ever investigated using groundwater within the Rangen facility? If so, please explain what investigations have been performed and any conclusions reached from those investigations.

Interrogatory No. 17: Describe in chronological fashion the historical development of the Rangen facility, including (but not limited to) all additions, modifications, expansions, and reconfigurations of the Rangen facility.

Interrogatory No. 18: For each development described in your answer to interrogatory number 17, please describe what effect the development had on the operation of and beneficial use of water within the Rangen facility.

Interrogatory No. 19: Has Rangen or to Rangen's knowledge any other person or entity improved or attempted to improve the spring outlets that supply the Water Rights? If yes, please describe all such improvements or attempted improvements.

Interrogatory No. 20: Identify each person who makes fish stocking and rearing decisions at the Rangen facility, and describe his/her qualifications, by whom he/she is employed, and how many years he/she has worked at the Rangen facility.

Interrogatory No. 21: List the name and address of all fish rearing, hatchery, processing, brooding or other such type of facility owned in whole or in part or operated or managed by Rangen, and for each such facility identify its location, the name(s) of its operator(s), and the water rights that supply the facility.

Interrogatory No. 22: For the Rangen facility, describe (using one or more aerial photos if desired) the locations of all of the following items:

- a. Spring outlets that supply the Water Rights.
- b. Points of diversion of the Water Rights.
- c. Points of discharge of the Water Rights.
- d. Course(s) of water flow of the Water Rights between the point(s) of diversion and point(s) of discharge.
- e. Devices used to measure the quantity or quality of water flow.

f. Where any other water quality sampling and measurements are taken;

Interrogatory No. 23: Identify all agencies to whom water quality or quantity data from the Rangen facility are reported to, and the method and frequency of such reports.

Interrogatory No. 24: Describe all types of measurements and water quality samples that are taken with respect to the Rangen facility for purposes of reporting to the Idaho Department of Environmental Quality.

Interrogatory No. 25: Describe all water treatment processes performed within the Rangen facility; the location, reason, and frequency of such treatments; the process of such treatments; and the chemicals, antibiotics, or other products used in such treatments.

Interrogatory No. 26: Describe how the number of fish produced at the Rangen facility has changed over time.

Interrogatory No. 27: Describe how fish production numbers have changed over time utilizing existing rearing containers at the Rangen facility.

Interrogatory No. 28: Are any fish rearing raceway/ponds at the Rangen facility not being utilized due to water volume, flow, or dissolved oxygen constraints?

Interrogatory No. 29: Describe how fish stocking or restocking decisions are made and in which month(s) fish stocking occurs at the Rangen facility. Please include in the description what density and flow indexes are used at the facility, and any other methods or loading factors used to make such decisions.

Interrogatory No. 30: Explain whether dissolved oxygen and total gas saturation parameters fluctuate during the year and how, where, and how often this data collected.

Interrogatory No. 31: What water turnover rates are used in the fish rearing containers at the Rangen facility?

Interrogatory No. 32: With respect to water right no. 36-02551 describe:

- a. Evidence showing material injury to this water right.
- b. The amount of water available at the source at the time this water right was originally appropriated.
- c. Seasonal fluctuations in the supply of water under this water right at the time it was originally appropriated.

LAW OFFICES OF

**RACINE OLSON NYE BUDGE & BAILEY
CHARTERED**

W. MARCUS W. NYE
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL
JOHN B. INGELSTROM
DANIEL C. GREEN
BRENT O. ROCHE
KIRK B. HADLEY
FRED J. LEWIS
ERIC L. OLSEN
CONRAD J. AIKEN
RICHARD A. HEARN, M.D.
LANE V. ERICKSON
FREDERICK J. HAHN, III
PATRICK N. GEORGE
SCOTT J. SMITH
JOSHUA D. JOHNSON
DAVID E. ALEXANDER
STEPHEN J. MUHONEN
CANDICE M. MCHUGH
CAROL TIPPI VOLYN
JONATHAN M. VOLYN
THOMAS J. BUDGE
BRENT L. WHITING
DAVE BAGLEY
JASON E. FLAIG
FERRELL S. RYAN, III
AARON A. CRARY
JOHN J. BULGER
BRETT R. CAHOON
NOLAN E. WITTRICK

101 SOUTH CAPITOL BOULEVARD
SUITE 300
BOISE, IDAHO 83702

TELEPHONE (208) 395-0011
FACSIMILE (208) 433-0167

WWW.RACINELAW.NET

SENDER'S E-MAIL ADDRESS: CJA@RACINELAW.NET

POCATELLO OFFICE

201 EAST CENTER STREET
P.O. BOX 1381
POCATELLO, IDAHO 83204
TELEPHONE: (208) 232-6101
FACSIMILE: (208) 232-6109

IDAHO FALLS OFFICE

477 SHOUP AVENUE
SUITE 107
POST OFFICE BOX 50688
IDAHO FALLS, ID 83405
TELEPHONE: (208) 528-6101
FACSIMILE: (208) 528-6101

ALL OFFICES TOLL FREE
(877) 232-6101

LOUIS F. RACINE (1917-2005)
WILLIAM D. OLSON, OF COUNSEL
JONATHAN S. BYINGTON, OF COUNSEL

January 15, 2013

VIA EMAIL

Robyn M. Brody
Brody Law Office, PLLC
P.O. Box 554
Rupert, ID 83350

Re: *Rangen CM-DC-2011-004*

Dear Robyn:

This letter is sent pursuant to Idaho Rule of Civil Procedure 37(a)(2) in an effort to secure complete answers to IGWA's *Third Set of Discovery Requests*. IGWA requested information and documents relative to two facilities that IGWA recently discovered Rangen at one time owned and/or operated: Woods Farm Ponds and Decker Springs Farm Ponds. However, Rangen has refused to provide information or documents relative to these two facilities because it claims that the information "is not reasonably calculated to lead to the discovery of admissible evidence to the extent it requests information outside of the Rangen Hatchery where the water rights at issue are used." Idaho Rule of Civil Procedure 26(b)(1) authorizes discovery of "any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery...including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things . . ." In this case, Rangen is claiming material injury to the use of its water rights at the Rangen Hatchery and is claiming that the decrease in water supply to the Rangen Hatchery has caused it to not be able to produce as many fish as it desires, among other things.

We respectfully disagree. Information about fish facilities previously owned or operated by Rangen is relevant in this case to allow us to understand Rangen's claim that its current water supply is insufficient to satisfy its beneficial uses. If, for example, Rangen's past fish rearing relied upon capacity at other facilities remote from the Rangen Hatchery, this calls into question your client's assertion that the current water availability is inadequate. These facts may explain Rangen's current capacity to rear fish, perform research or otherwise use its water at the Rangen Hatchery. Discovery as to Rangen's use of water at these other two facilities may also relate to

Exhibit 3

defenses that IGWA may have regarding material injury, including by not limited to whether Rangen's diversion and use at the Rangen Hatchery is reasonable (CM Rule 40.03), efficient (CM Rule 42.01, 42.01.b, 42.01.c, 42.01.e) or can be met by other improvements (CM Rule 42.01.g and h), all of which are part of the Director's evaluation in this case.

Furthermore, at Doug Ramsey's second deposition, he made mention of other facilities and specifically the First Ascent facility which he claimed was erected for Rangen (Tr. p. 279, L. 2-6). He also claimed that Rangen had the research building at First Ascent built "specifically for feeding trials." (Tr. p. 280, L. 7-10). Existing testimony of Rangen's witnesses substantiates IGWA's understanding that Rangen used other facilities to enhance the use of its facilities at the Rangen Hatchery; thus, the ownership and operation of Woods Farm Ponds and Decker Springs may lead to the discovery of related information that is both relevant and admissible.

IGWA is also requesting a supplement to Rangen's answers to include information about the First Ascent property.

Because time is short and expert rebuttal reports are imminent, please provide the complete answers to IGWA's *Third Set of Discovery Requests* and supplement your prior answers relative to the First Ascent property no later than Friday, January 18, 2013.

Thank you for your anticipated courtesy and cooperation in this regard.

Sincerely,



Candice M. McHugh

cc: Sarah Klahn
Fritz Hammerle
Justin May